IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

RSA 221 of 1999.

Judgment reserved on May 21, 2007.

Date of decision June 1, 2007.

Ramesh Kumar and others …**Appellants**

Versus

Mandir Thor (Math Thor) …**Respondents.**

Coram

The Hon'ble Mr.Justice Dev Darshan Sud, J.

Whether approved for reporting?[1]

For the Petitioners: **Mr. B.S.Kanwar, Advocate.**

For the Respondents: **Mr. B.K.Malhotra, Advocate.**

Dev Darshan Sud, J.

This is the plaintiffs Second appeal against the judgment and decree of the learned Courts below dismissing their suit claiming a decree of declaration that they had become tenants of the defendant, consequential relief of injunction and a declaration that they be declared as owners in possession of the land under their purported tenancy in accordance with

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[1] *Whether reports of Local Papers may be allowed to see the judgment?*

the provisions of the Himachal Pradesh Tenancy and Land Reforms Act, 1972, was dismissed.

The plaintiffs approached the learned trial Court on the allegations that the predecessors in interest of the plaintiffs had been settled on the land as tenants by Mahant Akhanda Nand Giri Shri Shri 1008 on payment of half the share of crop as six monthly rent. The plaintiffs alleged that since the defendants had been receiving this crop as "Galla Batai" which was the consideration on rent, therefore, they were entitled to a declaration of tenancy.

Necessity for filing the suit arose when the plaintiff discovered that the revenue records had not been properly maintained. According to the plaintiffs, receipts etc. were also being issued in favour of the defendants – respondents. On the refusal of the Secretary of the Temple Committee to accept rent on 14.5.1992 and 26.5.1992, the plaintiffs had a reasonable apprehension that they would be evicted from the land. The suit was resisted by the defendants on the ground that there no tenancy was created, but the land was given on auction on annual contract etc. The question regarding jurisdiction of the Court was raised as a

preliminary objection and a bar by the Court to entertain the suit. The learned trial Court framed six issues. Issue No. 1 considered the status of the plaintiffs as tenants under the defendants to the extent as claimed; second issue was whether the defendants were interfering with the lawful possession of the plaintiffs. Issue No. 6 was framed to determine as to whether the suit land had been given on annual contract as alleged by the defendants. The learned trial Court after recording evidence decided all the issues holding issue No. 1 against the plaintiffs and issue No. 6 in favour of the defendants. On the question of jurisdiction, issue No. 5 was framed on which the learned trial Court held that the jurisdiction of the Civil Court was barred. Accordingly, the plaint was rejected.

The plaintiffs appealed to the learned District Judge who formulated two points, namely whether the Civil Court had jurisdiction to try the case and secondly whether the findings of the trial Court on issues 1 and 6 dealing with the tenancy were correct? The learned District Judge rightly did not give any finding on the second aspect of the matter holding that

the Civil Court had no jurisdiction to try the suit. The plaintiffs have appealed against this judgment.

I have heard the learned counsel for the parties and have gone through the record.

The learned Courts below have relied on a Full Bench Judgment of this Court in Chuhniya Devi v. Jindu Ram (1991 (1) Sim.L.C.223), holding that the jurisdiction of the Civil Court was barred. This case was subsequently considered by this Court in Shankar v. Rukmani and others (2003 (1) Shim. L.C. 300). While disposing of the appeal, this Court has held:

> **"3. After hearing the learned counsel for the parties and going through the record, we find that the District Judge has wrongly applied the ratio of judgment in *Chuhniya Devi v. Jindu Ram's case (supra)* to the facts and circumstances of the present case. From the pleadings of the parties it is clear that the plaintiff claimed himself to be in continuous possession of the suit land as tenant for the last 20 years, whereas the defendants denied his claim and asserted that they are owners in possession. Therefore, admittedly the relationship of**

landlord and tenant is in dispute despite the revenue entries in favour of the plaintiff and such kind of disputes are triable by the Civil Court.

10. Coming to the case in hand, it is not averred by the either party that either the proceedings were initiated or the order was passed under Chapter X of the Act. Therefore, we have no hesitation to hold that the ratio of judgment in *Chuhniya Devi v. Jindu Ram's* case is not applicable to the facts and circumstances of the present case and the Civil Court has the jurisdiction to decide the suit of the plaintiff."

Similarly, in Amar Chand v. Thakri Devi (Latest HLJ 2005 (HP) 1108), this Court, following the ratio in Shankar v. Rukmani and others (supra) held:

"9. The dispute whether a given person is a tenant or not would arise when in the proceedings regarding resumption of land, the person cultivating the land claims that he is tenant qua that land and the owner of the land denies that

> **claim. Such a question would be determined by the Land Reforms Officer, appointed for the purpose of Chapter X. A question which arises between two persons, each claiming to be tenant in respect of a given extent of land, as in the present case, cannot be said to be a dispute between the owner of the land and the tenant, nor has such a question any relevance to the proceedings required to be conducted under Chapter X of the Act and hence the Land Reforms Officer does not have jurisdiction in respect of such a dispute. To such matters, the provision of Section 112 of the Act barring the jurisdiction of the Civil Court is not attracted."**

I see no reason to differ with the ratio laid down in these judgments. Even otherwise these judgments follow the established precedent of the Hon'ble Supreme Court in Dhulabhai etc. v. State of Madhya Pradesh and another (AIR 1969 Supreme Court 78), holding that exclusion of jurisdiction of a Civil Court is not to be inferred readily unless the conditions precedent barring such jurisdiction are strictly established.

Admittedly, in the present case, no proceedings are pending before the revenue Courts, nor is the question regarding tenancy being dealt with by the revenue authorities. The Courts below were therefore not correct in holding that jurisdiction of the Civil Courts to try the suit was barred by law. The appeal was admitted on substantial question of law No. 2 dealing with the jurisdiction of the Civil Court to entertain the present suit. This question is answered in favour of the appellant holding that the Civil Courts have jurisdiction to entertain the suit in question. The judgment of the learned Courts below to the extent it is held that the Courts have no jurisdiction to deal with the controversy is quashed and set aside. The other findings of fact arrived at by the learned trial Court and the learned appellate Court shall remain intact. The matter is remanded to the learned District Judge for decision afresh on the points which are raised before that Court dealing with the findings of the learned trial Court on the other issues. The learned District Judge shall dispose of the matter within a period of six months from today, considering that the suit had been

instituted in the year 1992. There shall be no order as to costs. Parties to appear before the learned trial Court on 30.6.2007. Record of the proceedings be sent back immediately.

June 1, 2007(PC). (Dev Darshan Sud), J.